

# ZEPHYR SOCIAL - Service Level Agreement (SLA)

## **1. DEFINITIONS**

**1.1** Hosting Provider Company refers to the specialist companies, such as Flywheel, Siteground, WP Engine or GoDaddy, from whom ZEPHYR SOCIAL contract their Web Hosting Services.

**1.2** A Project can be a website, digital marketing agreement, or any other service provided by ZEPHYR SOCIAL to the Customer.

**1.3** "Frustrates" is a term used to describe were one party to a contract acts in a way so as to make it unrealistic for the other party to carry out their part of the contract.

**1.4** The word "contract" as it appears in these terms and conditions shall mean the contract between ZEPHYR SOCIAL and the Customer, which will be based on the terms and conditions contained within this Service Level Agreement.

## **2. ABBREVIATIONS**

**2.1** SLA stands for Service Level Contract.

**2.2** ISP stands for Internet Service Provider.

**2.3** HPC stands for Hosting Provider Company.

## **3. CONTRACT**

**3.1** The terms and conditions contained in this SLA apply to all ZEPHYR SOCIAL customers unless agreed in writing to the contrary. No other contract terms and conditions shall apply unless specifically agreed in writing between ZEPHYR SOCIAL and the Customer. In the event of any ambiguity between these terms and conditions and any terms agreed in writing between ZEPHYR SOCIAL and the Customer then these terms and conditions will apply.

## **4. ESTIMATES**

**4.1** ZEPHYR SOCIAL will provide customers with initial estimates for projects on request. The final project sum may vary from the initial estimate. An estimate as opposed to fixed price quotation is useful when the actual project sum cannot be reasonably or accurately ascertained at the onset.

**4.2** Work carried out against estimates will be charged in accordance with clause 8.

**4.3** Acceptance by a customer of a ZEPHYR SOCIAL estimate is subject to acceptance of the terms and conditions in this SLA, unless specifically agreed in writing between the Customer and ZEPHYR SOCIAL to the contrary.

## **5. FIXED PRICE QUOTATIONS**

**5.1** Whenever possible ZEPHYR SOCIAL will provide customers with a fixed price quotation and detailed specification for a project.

**5.2** Items omitted or added to the specification that accompanies a fixed price quotation will be treated as variations in accordance with clause 6.

**5.3** Acceptance by a customer of a ZEPHYR SOCIAL quotation is subject to acceptance of the terms and conditions in this SLA, unless specifically agreed in writing between the Customer and ZEPHYR SOCIAL to the contrary.

## **6. VARIATIONS**

**6.1** The value of work included in a fixed price quotation specification that is omitted will be valued and deducted from the final project sum.

**6.2** Work that is in addition to that detailed in a fixed price quotation specification will be valued and added to the final project sum.

## **7. COPYRIGHT**

**7.1** The source code of all website web pages remains the intellectual property of ZEPHYR SOCIAL and may not be copied and used by any other party without the consent of ZEPHYR SOCIAL .

**7.2** All scripts, css and included files used within customer websites remains the intellectual property of ZEPHYR SOCIAL and may not be copied and used by any other party without the consent of ZEPHYR SOCIAL .

**7.3** The stored procedures, functions and triggers programmed in to SQL Databases remain the intellectual property of ZEPHYR SOCIAL and may not be copied and used by any other party without the consent of ZEPHYR SOCIAL .

**7.4** All customer logo images, images unique to the customer, plus all written copy, belong to the customer and are covered under their copyright. ZEPHYR SOCIAL will not reuse customer written content or images without the express permission of the customer.

## **8. HOURLY RATE CHARGES**

**8.1** ZEPHYR SOCIAL will charge for services provided that are not included in any quotation or under the terms of clause (9), Hosting. The amount charged will be based on ZEPHYR SOCIAL 'S standard hourly rate, unless a different hourly rate has otherwise been agreed in writing.

**8.2** ZEPHYR SOCIAL will review and may increase their standard hourly rate on an annual basis.

**8.3** There will be a minimum charge of 60 minutes.

## **9. HOSTING**

**9.1** ZEPHYR SOCIAL prefers to use high performance web servers hosted by first class HPC's, such as Flywheel, Siteground, WP Engine or GoDaddy.

**9.2** ZEPHYR SOCIAL has no responsibility for the performance of hosting servers.

**9.3** ZEPHYR SOCIAL will quote a separate annual price for the hosting and associated technical support for customer websites.

**9.4** ZEPHYR SOCIAL will use their best endeavors, in conjunction with the HPC, to rectify the cause of any disruption in the hosting service of a customer's website(s) and to minimize the duration of any such instances.

**9.5** ZEPHYR SOCIAL warrants that the Clients uptime availability will be at least 99.9% except where the failure results from:

(a) A failure or malfunction in relation to any device or equipment, any software or power supply outside our control, unless caused by our wrongful act or omission;

(b) The Client's act or omission (or a person under the Client's direction or control);

(c) A failure or malfunction of any software forming part of the Services which has not been subjected to a testing regime due to its time critical nature including updates, patches, definitions etc.;

(d) during scheduled maintenance windows and any emergency maintenance and upgrade work;

(e) a requirement, direction or any other order issued by a court, government authority, administrative or judicial body;

(f) unauthorised or illegal access by any party to any party of the computer systems used to provide the Services including hacking, cracking, virus dissemination and denial of service attacks;

(g) any false breaches reported as a result of outages or errors of any ZEPHYR SOCIAL measurement system;

(h) DNS propagation;

**9.6** If in any calendar month, should ZEPHYR SOCIAL fail to meet the Uptime SLA, ZEPHYR SOCIAL will refund to the Client, as its sole right or remedy, a 20% percentage credit of the fees for the relevant Service in that month ("Service Credit"). Service Credits are calculated against that month's webhosting fees and charges only. The Client must request a Service Credit in writing via our email address [info@zephyrsocial.com.au](mailto:info@zephyrsocial.com.au). All requests must be made within 30 days of the Uptime SLA breach occurring, and the Client must provide ZEPHYR SOCIAL with details of the breach claimed for verification purposes. If the breach is confirmed by ZEPHYR SOCIAL (based on ZEPHYR SOCIAL 's records obtained from its monitoring services) to have occurred, then ZEPHYR SOCIAL will, within 60 days of your request being received, apply the

relevant Service Credit to the Client's nominated account.

**9.7** The Client is only entitled to make 1 claim for a Service Credit per month.

**9.8** Where the Client is in breach of its obligations under this Agreement, including its obligation to pay Fees, then any Service Credit will be set off and deducted from the amount owed by the Client to ZEPHYR SOCIAL . Nothing in this clause prevents ZEPHYR SOCIAL from exercising its full rights to recover monies from the Client owed to ZEPHYR SOCIAL under this Agreement.

**9.9** ZEPHYR SOCIAL takes no responsibility for a websites functionality or performance that has been transferred into its hosting environment pursuant to this clause. If ZEPHYR SOCIAL identifies any issues with the website which may degrade the server and/or affect the stability of the Clients website, ZEPHYR SOCIAL will notify the Client of same and such issues must be rectified at the Clients expense in order to continue the hosting services.

**9.10** ZEPHYR SOCIAL will ensure that customer websites are regularly backed up by our providers, to ensure that in the unlikely event of any technical failure that the website can be restored with the full assistance of ZEPHYR SOCIAL .

**9.11** In the event that a customer wishes to move their website to another web server supported by another party, then ZEPHYR SOCIAL will cooperate fully, subject to all outstanding amounts being paid up in full, in advance.

**9.12** In the event that the Customer requires assistance with remedying a situation with their website that is not a technical fault caused by ZEPHYR SOCIAL or the HPC the time expended by ZEPHYR SOCIAL will be charged to the Customer in accordance with clause 8.

**9.13** ZEPHYR SOCIAL will invoice for Hosting on a 6 monthly or annual basis, in advance, depending on the clients preference.

## **10. WEBSITE SERVICES**

**10.1** ZEPHYR SOCIAL will offer to customers third party services such as those offered by Google and Facebook to enhance the performance of their websites. ZEPHYR SOCIAL may include in quotations the setup and maintenance of such third party services. ZEPHYR SOCIAL will not be liable to the customer for any interruption, non-performance, or cancellation of the provision by third parties of any such services.

## **11. SEARCH ENGINES**

**11.1** ZEPHYR SOCIAL accepts no responsibility or liability to the customer for search engine rankings or how such rankings may vary over time. ZEPHYR SOCIAL will give consideration to search optimization when building a website, but SEO services are separate from the design & development process and require a separate agreement due to the ongoing nature of SEO.

## **12. INVOICING & PAYMENT**

**12.1** ZEPHYR SOCIAL standard payment terms are 14 days from the date of invoice.

**12.2** ZEPHYR SOCIAL will specify within estimates or quotes how a project will be invoiced. Large projects may be split in to a number of monthly interim invoices plus a final invoice on completion, or an up front deposit with final invoice on completion.

## **13. PERFORMANCE**

**13.1** ZEPHYR SOCIAL will ensure that the specification quoted for to the customer works as intended. In the event that the customer reports that some part of the specification is not functioning correctly then ZEPHYR SOCIAL will investigate this and take corrective action, which will be at no expense to the customer.

**13.2** In the event that the customer reports an issue which is related to a matter that falls outside of the project specification then ZEPHYR SOCIAL will investigate this and email the customer a report and if appropriate, a price to carry out the extra work involved to resolve the issue.

## **14. DAMAGES**

**14.1** Unless expressly agreed in writing to the contrary ZEPHYR SOCIAL do not have any liability to the customer for any delays in completing a project.

**14.2 ZEPHYR SOCIAL** do not have any liability to the customer for the performance of a website, database or any other entity/service developed/setup for the client.